

Public Chapter 557

HOUSE BILL NO. 1140

By Representatives Patton, Hood, Boyer, Bowers, Ralph Cole, McMillan, Givens, Haley, Hargett

Substituted for: Senate Bill No. 1623

By Senators Harper, Crowe, Person, Haynes, Kurita, Kyle, Cohen

AN ACT to amend Tennessee Code Annotated, Title 36 and Title 37, relative to family law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, is amended by adding the following language as a new part:

**Section 36-6-401. Findings, Application, and Report.**

(a) Parents have the responsibility to make decisions and perform other parental duties necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The General Assembly recognizes the detrimental effect of divorce on many children and that divorce, by its nature, means that neither parent will have the same access to the child as would have been possible had they been able to maintain an intact family. The General Assembly finds the need for stability and consistency in children's lives. The General Assembly also has an interest in educating parents concerning the impact of divorce on children. The General Assembly recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care.

The General Assembly finds that mothers and fathers in families are the backbone of this State and this Nation. They teach children right from wrong, respect for others, and the value of working hard to make a good life for themselves and for their future families. Most children do best when they receive the emotional and financial support of both parents. The General Assembly finds that a pilot project with a different approach to dispute resolution in child custody and visitation matters would be useful.

(b) The General Assembly enacts this part to serve as a pilot project in the following judicial districts or individual circuit court:

- (1) Second Judicial District consisting of Sullivan County.

(2) Sixteenth Judicial District consisting of Rutherford and Cannon counties; and

(3) Division III of the Circuit Court for the Thirtieth Judicial District, Shelby County, at Memphis.

(4) Second Circuit Court of the Twentieth Judicial District in Davidson County.

(5) Fourth Division of the Circuit Court of the Sixth Judicial District in Knox County.

(6) The Circuit Courts of Hamilton County;

(7) Any one (1) or more divisions of the circuit and chancery courts in the Eleventh Judicial District consisting of Hamilton County, as designated by the presiding judge to the administrative office of the courts.

(c) The administrative office of the courts shall collect data from each judicial district participating in the pilot project and shall supply a report with statistical data showing the effectiveness or ineffectiveness of this pilot project to the General Assembly by February 1, 1999.

#### **Section 36-6-402. Definitions.**

As used in this part, unless the context requires otherwise:

(1) "Custodial Parent" means where, in order to comply with other federal and state laws, it is necessary to designate one (1) parent as the custodial parent, the primary residential parent may be deemed to be the custodial parent where agreed to by the parties or ordered by the court. Provided, however, such designation does not affect the decision making process as delineated in the parties' parenting plan.

(2) "Parenting responsibilities" means those aspects of the parent child relationship in which the parent makes decisions and performs duties necessary for the care and growth of the child. Parenting responsibilities include:

(A) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(B) Attending to the daily needs of the child, such as feeding, clothing, physical care, and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(C) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(D) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(E) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances;

(F) Providing for the financial support of the child; and

(G) Supervising the child to encourage and protect emotional, intellectual, moral, and spiritual development.

(3) "Parenting Schedule" is the schedule of when the child is in each parent's physical care.

(4) "Permanent parenting plan" means a plan for parenting the child, including the allocation of parenting responsibilities and the establishment of schedules incident to those allocations, as well as an award of child support pursuant to title 36, chapter 5. Any final decree or decree of modification in an action for absolute divorce, divorce from bed and board, annulment, or separate maintenance shall incorporate such plan.

(5) "Primary Residential Parent" means the parent with whom the child resides more than fifty percent (50%) of the time.

(6) "Residential provisions" include the parenting schedules, time in residence at each parent's house, decision-making allocation, and parenting function allocation.

(7) "Temporary parenting plan" means a plan for parenting of the child, including the allocation of parenting responsibilities, the establishment of schedules incident to those allocations, and the establishment of temporary financial support designed to maintain the financial status quo to the extent possible, which plan is incorporated in any temporary order of any court having jurisdiction over an action for absolute divorce, divorce from bed and board, annulment, or separate maintenance.

#### **Section 36-6-403. Juvenile Court Jurisdiction.**

Nothing in this chapter shall be construed to alter, modify or restrict the exclusive jurisdiction of the Juvenile Court pursuant to §37-1-103.

#### **Section 36-6-404. Gender.**

It is the legislative intent that the gender of the party seeking to be the primary residential parent shall not give rise to a presumption of parental fitness or cause a presumption in favor of or against such party.

#### **Section 36-6-405. Parent Educational Seminar.**

(a) In an action for absolute divorce, divorce from bed and board, annulment, or separate maintenance involving minor children, or in a post-judgment proceeding involving minor children, in which the allocation of parenting responsibilities or the establishment of schedules or both are in dispute, each parent shall attend a parent educational seminar concerning how to protect and enhance the child's emotional development and informing the

parents regarding the legal process. The program may be divided into sessions, which in the aggregate shall not be less than four (4) hours in duration. The program shall be educational in nature and not designed for individual therapy. The minor children shall be excluded from attending these sessions. This requirement may be waived upon motion by either party and the agreement of the court upon the showing of good cause for such relief.

(b) The fees or costs of the educational sessions under this section, which shall be reasonable, shall be borne by the parties and may be assessed by the court as it deems equitable. Such fees may be waived for indigent persons.

(c) No court shall deny the granting of a divorce from the bonds of matrimony for failure of a party or both parties to attend the educational session.

**Section 36-6-406. Failure to comply with decree, temporary injunction, temporary or permanent parenting plan -- Obligation to make support or maintenance payments or permit contact with children not suspended.**

(a) The performance of parental responsibilities and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree, temporary injunction, restraining order, temporary parenting plan, or permanent parenting plan, the obligation of the other party to make payments for support or maintenance or to permit contact with children is not suspended.

(b)(1) A petition may be filed to initiate a contempt action to require a parent to comply with an order establishing the allocation of parental responsibilities, parenting schedule, or child support. If the court finds there is reasonable cause to believe the parent has not complied with the order, the court shall hold a contempt hearing and issue such injunctive relief as is proper.

(2) If, based on all the facts and circumstances, the court finds after a hearing that the parent, in bad faith, has not complied with the provisions of a decree, temporary injunction, restraining order, temporary parenting plan, or permanent parenting plan, the court shall find the parent in contempt of court. Upon a finding of contempt, the court may order:

(A) Such relief as is fair and equitable under the circumstances, including allocating additional time with the child to the parent denied access to the child; and

(B) ordering the non-complying parent to pay to the other parent all court costs and reasonable attorneys' fees incurred as a result of the noncompliance, and any other reasonable expenses the court deems appropriate.

If either parent willfully fails, in bad faith, to fulfill and abide by their residential parental responsibilities, the parent may be subject to the contempt power of the court including, but not limited to, incarceration, and payment of court costs, reasonable attorney fees, and other reasonable expenses.

(c) For purposes of subsections (a) and (b) of this section, the non-complying parent is deemed to have the present ability to comply with the

parenting plan unless he or she establishes otherwise by a preponderance of the evidence. The non-complying parent shall establish that the failure to comply was not due to bad faith.

(d) Subsections (a) and (b) of this section authorize the exercise of the court's power to impose remedial sanctions for contempt of court, including but not limited to, incarceration pursuant to the court's contempt powers.

(e) Upon the filing of a petition for contempt of court under subsections (a) and (b) of this section, if the court finds the complaint was brought without a reasonable basis, the court may order the moving party to pay to the nonmoving party all court costs and reasonable attorney's fees and any other expenses the court deems appropriate.

**Section 36-6-407. Procedure for determining temporary parenting plan.**

The allocation of parental responsibilities upon the filing of a complaint for absolute divorce, divorce from bed and board, annulment, or separate maintenance shall be determined as follows:

(1) If the parties can agree to temporary support and residential provisions, no written temporary parenting plan is required to be entered.

(2) If the parties cannot agree upon an allocation of parental responsibilities, either or both parties shall request the court to order mediation or alternative dispute resolution procedure pursuant to Supreme Court Rule 31. This motion may be contained in the complaint or in a separate motion filed by either party. The court shall immediately order the parties to participate in mediation or an alternative dispute resolution procedure to establish a temporary parenting plan unless one of the restrictions in §36-6-412(a) exists. If mediation or an alternative dispute resolution procedure is not available within twenty-four (24) hours, the court shall order an expedited hearing to establish temporary support and residential provisions. One (1) mediator shall serve the four (4) Circuit Courts of Hamilton County. Each party shall submit a proposed temporary parenting plan and a verified statement of income as defined by title 36, chapter 5 and a verified statement that the plan is proposed in good faith and is in the best interest of the child. If only one (1) party files a proposed temporary parenting plan in compliance with this section, that party may petition the court for an order of default adopting that party's temporary parenting plan, upon a finding by the court that the plan is in the child's best interest. In determining whether the proposed temporary parenting plan serves the best interests of the child, the court may consider the allocation of residential time and support obligations contained in the child support guidelines and related provisions in title 36, chapter 5.

**Section 36-6-408. Procedure for determining permanent parenting plan.**

(a) The parties, by consent, may propose a permanent parenting plan for court approval:

(1) With, in the case of an action for absolute divorce, annulment, divorce from bed and board, or separate maintenance, a

signed marital dissolution or separation agreement filed with the complaint, the answer, or at any time before the entry of a final decree or judgment; or

(2) With a consent order to modify a final decree or judgment regarding divorce, divorce from bed and board, or separate maintenance involving a minor child;

(b) If the parties cannot reach agreement on a permanent parenting plan, then within ninety (90) days after the commencement of the action, the parties shall submit a scheduling order to the court including a referral to mediation or alternative dispute resolution or a request for a waiver of alternative dispute resolution, for just cause. The scheduling order shall include a mediation procedure or alternative dispute resolution procedure. The mediation process or alternative dispute resolution process referred to in this part shall be in accordance with Tennessee Supreme Court Rule 31. For the purposes of this part, such process may include:

(1) Mediation, the neutral party to be chosen by the parties or the court;

(2) Arbitration, the neutral party to be chosen by the parties or the court; or

(3) A mandatory settlement conference presided over by the court or a special master. Each neutral party, the court, or the special master shall apply or, in the case of mediation, assist the parties to uphold as a standard for making decisions in mediation, the criteria in §§36-6-411 and 36-6-412. Nothing in this part shall be construed to prevent a party from having his or her attorney present at a mediation or other dispute resolution procedure.

(4) The Rules of Evidence do not apply in any mediation or alternative dispute resolution process; the neutral party may rely upon evidence submitted that reasonably prudent persons would rely upon in the conduct of their affairs.

(c) If the parties have not reached agreement on a permanent parenting plan, each party shall file and serve a proposed permanent parenting plan on or before forty-five (45) days before the date set for trial, even though the parties may continue to mediate or negotiate. Failure to comply may result in the court's adoption of the filed plan if the court finds such plan to be in the best interest of the child. In determining whether the proposed permanent parenting plan is in the best interests of the child, the court may consider the allocation of residential time and support obligations contained in the child support guidelines and related provisions contained in title 36, chapter 5. Each parent submitting a proposed permanent parenting plan shall attach a verified statement of income pursuant to the child support guidelines and related provisions contained in title 36, chapter 5 and a verified statement that the plan is proposed in good faith and is in the best interest of the child.

#### **Section 36-6-409. Modifying Permanent Parenting Plans.**

(a) In a proceeding for a modification of a permanent parenting plan, or a previous final decree or judgment where no parenting plan in compliance with this part exists, a proposed parenting plan shall be filed and served with the

petition for modification and with the response to the petition for modification. Such plan is not required if the modification pertains only to child support. The obligor parent's proposed parenting plan shall be accompanied by a verified statement of that party's income pursuant to the child support guidelines and related provisions contained in title 36, chapter 5. The process established by §36-6-408(b) shall be used to establish an amended permanent parenting plan or final decree or judgment.

(b) Child support cases brought by the Department of Human Services or its contractors pursuant to Title IV-D shall be bifurcated from the remaining parental responsibilities issues. In the thirtieth judicial district, child support issues heard by the divorce referees shall be bifurcated from the remaining parental responsibilities issues.

#### **Section 36-6-410. Permanent parenting plan.**

(a) The objectives of the permanent parenting plan are to:

- (1) Provide for the child's physical care;
- (2) Maintain the child's emotional stability;
- (3) Encourage and protect the child's intellectual and moral development;
- (4) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for further modifications to the permanent parenting plan;
- (5) Establish the authority and responsibilities of each parent with respect to the child, consistent with the criteria in §§36-6-411 and 36-6-412;
- (6) Minimize the child's exposure to harmful parental conflict;
- (7) Encourage the parents, where appropriate under §§36-6-411 and 36-6-412, to meet their responsibilities to their minor child through agreements in the permanent parenting plan, rather than by relying on judicial intervention;
- (8) Provide for the child's financial security pursuant to the child support guidelines and in excess of such guidelines as the parties may agree; and
- (9) Otherwise protect the best interests of the child consistent with §36-6-401.

(b)(1) The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, parenting schedules, child support obligations, and residential provisions for the child.

(A) The obligor shall report annually to the obligee, and the Department of Human Services or its contractor in Title IV-D cases, his or her income as defined by the child support guidelines and related provisions contained in title 36, chapter 5.

The parenting plan shall include the annual date for reporting such income, and the court shall provide a form for filing the report of income.

(B) The plan shall include a process for resolving disputes, before court action, unless precluded or limited by §§36-6-411 or 36-6-412. Dispute resolution processes may include, but need not be limited to, mediation or arbitration, the neutral to be chosen by consent of the parties, or a Rule 31 neutral party to be appointed by the court; or a settlement conference to be conducted by the court or a special master. State agency cases are excluded from the requirement of dispute resolution as to the child support issues involved.

(2) In the dispute resolution process:

(A) Preference shall be given to carrying out the parenting plan;

(B) The parents shall use the designated process to resolve disputes relating to the implementation of the plan;

(C) A written record shall be prepared of any agreement reached in mediation, arbitration, or settlement conference and shall be provided to each party to be drafted into a consent order of modification;

(D) If the court finds that a parent willfully failed to appear at a scheduled dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the prevailing parent;

(E) The provisions of this subsection shall be set forth in the decree; and

(F) Nothing in this part shall preclude court action, if required to protect the welfare of the child or a party.

(3)(A) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, extracurricular activities, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in §§36-6-411 and 36-6-412. Regardless of the allocation of decision making in the parenting plan, the parties may agree that either parent may make emergency decisions affecting the health or safety of the child.

(B) Each parent may make the day-to-day decisions regarding the care of the child while the child is residing with that parent.

(C) When mutual decision-making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the appropriate dispute resolution



process, subject to the exception set forth in subdivision (b)(2)(F) of this section.

(4) The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in §§36-6-411 and 36-6-412.

(5) If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision in a parenting plan or child support order may result in a finding of contempt, under §36-6-406 or other applicable provision of law.

(6) Except when the court finds it not to be in the best interests of the affected child, each parenting plan shall grant to each parent the following rights during periods when the child is not in that parent's care:

(A) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations;

(B) The right to send mail to the child which the other parent shall not open or censor;

(C) The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any event of hospitalization, major illness or death of the child;

(D) The right to receive directly from the child's school upon written request which includes a current mailing address and upon payment of reasonable costs of duplication, copies of the child's report card, attendance records, names of teachers, class schedules, standardized test scores and any other records customarily made available to parents;

(E) The right to receive copies of the child's medical records directly from the child's doctor or other health care provider upon written request which contains a current mailing address and upon payment of reasonable costs of duplication;

(F) The right to be free of unwarranted derogatory remarks made about him or her or his or her family by the other parent to or in the presence of the child.

(G) Any of the foregoing rights may be denied in whole or in part to one or both parents by the court upon a showing that such denial is in the best interests of the child.

(7) Any judge having jurisdiction over the parenting plan of such a child may upon a showing of good cause deny any information concerning the residence of the child to the noncustodial or nonresident parent.

(8) No school official shall recognize a change in the parenting plan of a child at such official's school or day care unless:

(A) The person seeking the change of the parenting plan presents the school official with a certified copy of a valid court order from a Tennessee court changing the parenting plan; and

(B) The person seeking the change of the parenting plan gives the school official reasonable advance notice of such person's intent to take possession of such child at such official's school or day care center.

(9) The permanent parenting plan shall set forth the provisions of subdivisions (b)(3), (4), and (6) of this section.

**Section 36-6-411. Criteria for establishing the permanent parenting plan.**

(a) The court shall not order a dispute resolution process, except court action, if the court:

(1) Finds that any limiting factor under §36-6-412 applies;

(2) Finds that either parent is unable to afford the cost of the proposed dispute resolution process, unless such cost is waived or subsidized by the state; or

(3) Preempts such process upon motion of either party for just cause.

(b) If an order of protection issued in or recognized by this State is in effect or if there is a court finding of domestic abuse or criminal conviction involving domestic abuse within the marriage which is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer the parties to mediation only if:

(1) Mediation is agreed to by the victim of the alleged domestic or family violence;

(2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(3) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including, but not limited to, an attorney or advocate. The other party may also have in attendance at mediation a supporting person of his or her choice, including, but not limited to, an attorney or advocate.

(c) If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(1) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(2) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(3) The financial circumstances of the parties to pay for alternative dispute resolution processes where court sanctioned alternative dispute resolution programs are unavailable.

(d)(1) The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in §36-6-411, if it finds that:

(A) The agreement is consistent with any limitations on a parent's decision-making authority mandated by §36-6-412;

(B) The agreement is knowing and voluntary; and

(C) The agreement is in the best interest of the child and is agreed to by the guardian ad litem, if one has been appointed by the court.

(2) The court may consider a parent's refusal, without just cause, to attend a court ordered parental educational seminar in making an award of sole decision making authority to the other parent. The court shall order sole decision making to one parent when it finds that:

(A) A limitation on the other parent's decision making authority is mandated by §36-6-412;

(B) Both parents are opposed to mutual decision-making; or

(C) One (1) parent is opposed to mutual decision-making, and such opposition is reasonable in light of the parties' inability to satisfy the criteria for mutual decision-making authority.

(3) Except as provided in Subdivisions (d)(1) and (2), the court shall consider the following criteria in allocating decision making authority:

(A) The existence of a limitation under §36-6-412;

(B) The history of participation of each parent in decision-making in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and whether each parent attended a court ordered parent education seminar;

(C) Whether the parents have demonstrated the ability and desire to cooperate with one another in decision-making regarding the child in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and

(D) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(e)(1) The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with §36-6-411. If the limitations of §36-6-412 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(A) The parent's ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in the society which the child faces as an adult;

(B) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;

(C) Each parent's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interests of the child;

(D) Willful refusal to attend a court-ordered parent education seminar may be considered by the court as evidence of that parent's lack of good faith in these proceedings;

(E) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;

(F) The love, affection, and emotional ties existing between each parent and the child;

(G) The emotional needs and developmental level of the child;

(H) The character and physical and emotional fitness of each parent as it relates to his or her ability to parent or the welfare of the child;

(I) The child's interaction and interrelationships with siblings and with significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(J) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(K) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and

(L) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(M) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children; and

(N) Each parent's employment schedule, and the court may make accommodations consistent with those schedules;

(2) The court may order that a child alternate his or her residence between the households of the parents for substantially equal intervals of time only if the court finds the following:

(A) No limitation exists under §36-6-412; and

(B) The parties have agreed to such provisions, and the agreement was knowingly and voluntarily entered into; and

(C) The provisions are in the best interests of the child.

**Section 36-6-412. Restrictions in temporary or permanent parenting plans.**

(a) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct:

(1) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting responsibilities;

(2) Physical, sexual, or a pattern of emotional abuse of a child or of another person living with that child; or

(3) A history of acts of abuse as defined in §36-3-601(1) or a single incident of assault or sexual assault which causes serious bodily injury or the fear of such injury.

(b)(1) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct:

(A) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting responsibilities;

(B) Physical, sexual, or a pattern of emotional abuse of a child or of another person living with that child; or

(C) A history of acts of abuse as defined in §36-3-601(1) or a single incident of assault or sexual assault which causes serious bodily harm or the fear of such harm. This subsection (b) shall not apply when subdivision (b)(3) applies.

(2) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct:

(A) Physical, sexual or a pattern of emotional abuse of a child or of another person living with that child; or

(B) A history of acts of abuse as defined in §36-3-601(1) or a single incident of assault or sexual assault which causes serious bodily injury or the fear of such injury. This subsection (b) shall not apply when subdivision (b)(3) applies.

(3) If a parent has been convicted as an adult of a sexual offense under §39-15-302, title 39, chapter 17, part 10, or §§39-13-501--511, or has been found to be a sexual offender under title 39, chapter 13, part 7, the court shall restrain the parent from contact with a child that would otherwise be allowed under this part. If a parent resides with an adult who has been convicted, or with a juvenile who has been adjudicated guilty of a sexual offense under §39-15-302, title 39, chapter 17, part 10, or §§39-13-501--511, or who has been found to be a sexual offender under title 39, chapter 13, part 7, the court shall restrain that parent from contact with the child unless the contact occurs outside the adult or juvenile's presence and sufficient provisions are established to protect the child.

(c) A parent's involvement or conduct may have an adverse effect on the child's best interest, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(1) A parent's neglect or substantial nonperformance of parenting responsibilities;

(2) An emotional or physical impairment which interferes with the parent's performance of parenting responsibilities as defined in §36-6-402;

(3) An impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting responsibilities;

(4) The absence or substantial impairment of emotional ties between the parent and the child;

(5) The abusive use of conflict by the parent which creates the danger of damage to the child's psychological development;

(6) A parent has withheld from the other parent access to the child for a protracted period without good cause;

(7) A parent's criminal convictions as they relate to his or her ability to parent or to the welfare of the child; or

(8) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(d) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

**Section 36-6-413. Designation of custody for the purpose of other state and federal statutes.**

Solely for the purpose of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. Provided, however, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside a majority of the time shall be deemed to be the custodian for the purposes of such federal and state statutes.

**Section 36-6-414. Funding for mediation program.**

(a) The costs of the mediation required by this part shall be assessed as a part of the costs of the action.

(b)(1) For an indigent person, the cost of the mediation shall be based on a sliding scale based on a person's ability to pay.

(2) In addition to the privilege tax on marriage licenses under §§67-4-505 and 67-4-111, the County Clerk of each county designated as a part of the pilot project shall collect and forward to the County Trustee a tax of ten dollars (\$10) for each marriage license issued to cover the cost of the mediation required under this part and such proceeds shall be used only for such cost.

(3) The provisions of subdivision (b)(2) of this section shall apply not to counties with a metropolitan form of government and a population greater than five hundred thousand (500,000).

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 1997, the public welfare requiring it, and shall apply to each action or petition for modification filed on or after such date.